southern
utah
wilderness
alliance

HAND DELIVERED

September 15, 2011

Juan Palma
Utah State Director
Bureau of Land Management
440 West 200 South, 5th Floor
P.O. Box 45155
Salt Lake City, Utah 84145-0155

Re: Protest of Bureau of Land Management's Notice of Competitive Oil and Gas Lease Sale to Be Held on November 15, 2011

Greetings,

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, Southern Utah Wilderness Alliance, The Wilderness Society, Natural Resources Defense Council, Grand Canyon Trust, and Rocky Mountain Wild [formerly known as Center for Native Ecosystems][1] (collectively referred to herein as "SUWA") hereby timely protest the November 15, 2011, offering, in Salt Lake City, Utah, of the following seven parcels in the Vernal and Price field offices:

Vernal field office: UTU 88622 (UTU1111-011)[2]

Price field office: UTU 88624 (UTU1111-017), UTU 88625 (UTU1111-018), UTU 88626 (UTU1111-019), UTU 88627 (UTU1111-020), UTU 88628 (UTU1111-021), UTU 88629 (UTU111-022)

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[1] Rocky Mountain Wild joins this protest only as it pertains to parcel UTU 88622.

[2] BLM has attached UT-S-318 to parcel UTU 88622 which provides that "[a]ll or part of the lands contained in this lease may be subject to drainage by well(s) located adjacent to this lease." Based on personal communications with staff at the Utah Division of Oil, Gas and Mining (DOGM), SUWA is not aware of any effort by BLM to address drainage concerns or well spacing in T11S, R18E, Section 26. To the extent BLM is concerned about drainage, it should take the matter up directly with DOGM or XTO, the operator of the adjacent wells, and defer offering this lease. For the reasons explained *infra*, there are several other legal flaws with BLM's leasing decision that must be addressed before the parcel is offered sale and deferral would allow BLM to do so.

As explained below, the Bureau of Land Management's (BLM's) decision to sell these seven parcels at issue in this protest violates, among other federal laws and regulations, the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (NEPA); the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 *et seq.* (FLPMA); and the regulations and policies that implement these laws. SUWA incorporates its comments on the Price and Vernal field office leasing environmental assessments by reference and attached hereto.

SUWA requests that BLM withdraw these seven lease parcels from sale until the agency has fully complied with all the federal laws, regulations, and Secretarial orders discussed herein. Alternatively, the agency could attach unconditional no surface occupancy (NSO) stipulations to each parcel and proceed with the sale of these parcels.

BLM Must Protect the Proposed Four Mile Wash and Nine Mile Canyon ACECs

Four Mile Wash Potential ACEC

Parcel UTU 88622 is located within the BLM identified "potential" Four Mile Wash ACECs. *See* Vernal PRMP/FEIS at 3-88 to -90; *id.* at Figure 32. This potential ACEC contains the requisite relevance and importance criteria that were determined sufficient for ACEC designation. Specifically, BLM determined that the Four Mile Wash potential ACEC "[h]as significance due to qualities that make it fragile, sensitive, rare, irreplaceable, exemplary and unique. Spectacular scenery viewed by increasing numbers of visitors from many states and countries." Vernal PRMP at 3-89.

In the Vernal record of decision, BLM decided not to designate the Four Mile Wash potential ACEC. Vernal ROD at 39-41. As part of its rationale, BLM asserted that the identified relevance and importance values would be protected through other means. Leasing and development of parcel UTU 88622 would result in development within sight of the river and thus undermine the assurances made in the ROD that these relevant and important values would be protected.[3] A decision by BLM to offer parcel UTU 88622 without no surface occupancy stipulations or other similar highly restrictive stipulations

[3] The Four Mile Wash potential ACEC is over 50,000 acres. Vernal PRMP/FEIS at 3-89. The three identified "relevance" criteria identified by BLM are "[e]xistence of high value scenery, important riparian ecosystem, and special status fish." *Id.* Given the size of the potential ACEC and the relevance criteria, BLM's claim in the ROD that the high value scenery only exists along the river, and thus protecting the significant acreage in the potential ACEC on both sides of the river, but several miles away from the riparian corridor, is unnecessary makes no sense whatsoever. *See* Vernal ROD at 30. The only identified relevance value that could exist several miles from the river is the "high value scenery." *See* Vernal PRMP/FEIS at Figure 32 (depicting Four Mile Wash potential ACEC). BLM expressly relied on the outdated VRM classes carried forward in the Vernal RMP that classified much of the Four Mile Wash potential ACEC as Class III and IV to support its decision that the potential ACEC in fact did not need to be protected and lacked relevance values.

is at odds with FLPMA's mandate that BLM give priority to the designation of ACECs. 43 U.S.C. § 1712(c)(8). BLM must modify the proposed lease stipulations for parcel UTU 88622 to eliminate conflicts with the identified relevant and important values in the Four Mile Wash potential ACEC. In the alternative, BLM must undertake a plan amendment to consider designating this area as an ACEC and in the meantime defer this parcel from sale. *See generally* BLM Manual 1613, Areas of Critical Environmental Concern.

Nine Mile Canyon Potential ACEC

Parcels UTU 88624, UTU 88625, UTU 88626, UTU 88627, UTU 88628 and UTU 88629 are located within the potential Nine Mile Canyon ACEC. *See* Price PRMP/FEIS at 3-91; *id.* at Map 2-48. This potential ACEC contains the requisite relevance and importance criteria that were determined sufficient for ACEC designation. Specifically, BLM determined that the Nine Mile Canyon potential ACEC "possesses a significant and high density of historic, cultural, and archaeological sites joined together in several overlapping historical landscapes, including Nine Mile Canyon and its tributaries, from the stream bed to the top of the plateau." Price PRMP at 3-91.

In the Price record of decision, BLM decided not to designate the portions of the Nine Mile Canyon potential ACEC covered by these six leases. Price ROD at 42-48; *id.* at Map R-29. As part of its rationale, BLM asserted that the identified relevance and importance values would be protected through other means. Leasing and development of these six lease parcels would result in development within sight and sound of many culturally significance resources – resulting in potential adverse effects (*see* 36 C.F.R. § 800.5(a) – and thus undermine the assurances made in the ROD that these relevant and important values would be protected. A decision by BLM to offer these six parcels without no surface occupancy stipulations or other similar highly restrictive stipulations is at odds with FLPMA's mandate that BLM give priority to the designation of ACECs. 43 U.S.C. § 1712(c)(8). BLM must modify the proposed lease stipulations to eliminate conflicts with the identified relevant and important values in the Nine Mile Canyon potential ACEC. In the alternative, BLM must undertake a plan amendment to consider designating this area as an ACEC and in the meantime defer these parcels from sale. *See generally* BLM Manual 1613, Areas of Critical Environmental Concern.

BLM Has Not Taken a Hard Look at Noise Impacts from Development of Parcel UTU 88622

BLM has failed to take a hard look at the impact development on lease parcels UTU 88622 will have on the Green River soundscape. At a minimum this would involve establishing a baseline on current sound levels. The establishment of such a baseline is "essential in order to determine the acoustical impact of any proposed development ... which could violate the solitude." Arno S. Bommer and Robert D. Bruce, *Long-Term Ambient Sound Monitoring in National Parks*, Sound & Vibration 16, 16 (Feb. 1992) (attached). SUWA has included an instructive article on how such baseline studies might be conducted; SUWA incorporates this article into its comments. *See generally id.*

Ambient sound levels have been measured in national parks in Utah that present extremely low readings. For example, a monitor in Canyonlands National Park established in the winter measured L_{99} values – for which ambient sound readings will be below ninety-nine percent of the time – of 18 dBA during the day and 19 dBA at night. Mary Ann Grasser and Kerry Moss, *The Sounds of Silence*, Sound & Vibration 24, 25 (Feb. 1992) (attached). In many cases, ambient sound levels in these parks are below the ability of the measuring equipment to detect. *Id.* at 24. Bryce Canyon has measurements of L_{90} values of 35 dBA in the day and 20 dBA at night. *Id.* at 25. Dinosaur National Monument and Glen Canyon National Recreation Area had L_{90} values measured ranging from highs of 30 dBA to lows of 19 dBA throughout the year.[4] *Id.* at 25. The noise levels would be indicative of the background levels that the BLM might observe if it conducted an accurate study of ambient noise in the lease area.

SUWA has provided a study performed by Collaboration in Science and Technology Inc. of ambient sound levels in parks of the Colorado Plateau. *See generally* Collaboration in Science and Technology Inc., Ambient Sound Monitoring Program for Colorado Plateau Parks (Sep. 20, 1990) (attached). This document is also instructive for modeling. The BLM must model the impacts of sound to river recreationists and wildlife from development of these leases.

Furthermore, the Green River Management Plan specifically forbids the authorization of drilling projects that area located within sight or sound of the Green River. River Management Plan at 20, 29. The BLM has failed to take any background ambient noise level data on the Green River area and from the Desolation Canyon National Historic Landmark. Without the background ambient noise level and accurate modeling of potential noise sources the BLM cannot conclude that leasing parcel 88622 will comply with this management directive.

BLM's Approach to Visual Resources Violates Its Own Guidance and NEPA

The Vernal EA erroneously asserts that BLM is not required to consider visual resource inventory data that has been generated by the agency after completion of the 2008 Vernal RMP.

> At the time of the 2008 VFO ROD/RMP, VFO did not have new visual resource inventory data, therefore it was not used as part of the planning effort. The new inventory that VFO is now undertaking does not have to be used until the field office undertakes a new planning effort and if the information is new and different from that information that already exists.

[4] Excluding measurements from Rainbow Bridge, which would be influenced by the noise of motorboats and are less likely to reflect a pristine natural area such as would be found in the Desolation Canyon wilderness character area.

Vernal EA at 77. This position is inconsistent with BLM's own handbook and regulations, *See* BLM Handbook H1601-1 at 45 (Section VII.A); 43 C.F.R. § 1610.5-5, as well as NEPA's mandate that BLM "think first, then act."

As part of the Vernal planning process BLM determined that the Desolation Canyon wilderness character area is overwhelmingly "natural" in condition and is a "remote area" with a "vast size," "expansive landscape," and "numerous scenic vistas, and diversity of vegetation and landforms. Vernal RMP, Desolation Canyon wilderness character review (http://www.blm.gov/pgdata/etc/medialib/blm/ut/vernal_fo/planning/supplement_eis/wilderness_characteristic.Par.41406.File.dat/DESOLATION%20CANYON%20W.C.%20REVIEW.pdf). Also, BLM found that the Four Mile Wash potential contains "spectacular scenery" that "[h]as significance due to qualities that make it fragile, sensitive, rare, irreplaceable, exemplary and unique." Vernal PRMP/FEIS at 3-89.[5] Despite recognizing the remarkable scenic, natural and undisturbed scenery and vistas in these Desolation Canyon proposed wilderness area and Four Mile Wash potential ACEC, the Vernal RMP assigned the majority of this area as VRM III and IV.

BLM has recognized the Vernal RMP's shortcomings, along with all the other RMPs finalized in 2008, and recently contracted to have the missing inventories completed. Personal communication with Rob Sweeten, BLM Visual Resources Program Lead (Oct. 2010). The Vernal inventory is scheduled to be completed by August 2011. These findings must be incorporated into the Vernal leasing EA. BLM's lease first, think later approach violates NEPA. *See, e.g.*, 40 C.F.R. § 1502.9(c).

In the interim period, BLM has already recognized that the Desolation Canyon wilderness character area and Four Mile Wash potential ACEC have significant, dramatic visual resources. These resources are significantly different than what was indentified and analyzed in the 1970s Vernal EAR, the last BLM environmental analysis to involve a visual resource inventory. BLM, however, has never analyzed the impacts of oil and gas development on these important visual resources, but must do so before it proceeds. *See SUWA v. Norton*, 457 F. Supp. 2d 1253 (D. Utah 2006) (holding that BLM must prepare supplemental NEPA analyses when impacts to resources have not previously been prepared).

BLM Has Failed to Comply with the Requirements of Secretarial Order 3310 and IM 2010-117

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[5] In its explanation why the Four Mile Wash potential ACEC was not designated, the Vernal ROD erroneously asserts that of the area's 50,280 acres, none of the 35,000 odd acres located above the rim of the Green River corridor are scenic. Vernal ROD at 40. It is impossible to square this claim with the BLM's own recognition that the potential ACEC's "relevance and importance values" included high value scenery, riparian ecosystem, and special status fish. *Id.* More than 35,000 acres of the potential ACEC is located outside of the river corridor and thus lacks either a riparian ecosystem or special status fish. Therefore, the only relevance and importance value in that 35,000 acres is high value scenery.

In order to fully "consider" wilderness characteristics in the context of this lease sale, Secretarial Order 3310 requires the BLM to develop and evaluate a leasing alternative that fully protects lands with wilderness characteristics,[6] either through parcel deferrals or NSO stipulations. *See* SUWA Comment at 14-16. *See also* Secretarial Order 3310 § 1 ("This Secretarial Order (Order) affirms that the protection of the wilderness characteristics of public lands is a high priority for the Bureau of Land Management (BLM).") (emphasis added). Such an alternative would comply with a key provision of IM 2010-117, which requires BLM to evaluate lease sale alternatives that "address unresolved resource conflicts." BLM cannot rely on the Vernal and Price RMP's alternative analysis – prepared well before Secretarial Order 3310 and its emphasis on protecting wilderness values – as a substitute for analyzing an alternative in this leasing EA that would protect the Desolation Canyon wilderness character area. *See* Vernal EA at 75-76 (arguing that Vernal RMP alternative analysis was sufficient to comply with Secretarial Order 3310).

The Vernal and Price EAs' response to comments similarly argues that the 2008 RMPs sufficiently comply with the spirit of IM 2010-117 and that BLM does not need to undertake additional analysis or consider an alternative in the leasing EAs that would protect the Desolation Canyon and Jack Canyon wilderness character areas. Vernal EA at 76-77; Price EA at 100-101. *See* SUWA Comments at 14-16. This is plainly incorrect. BLM must undertake this analysis and assessment in light of the new direction in Secretarial Order 3310 and IM 2010-117. *See also* Report to Secretary Ken Salazar Regarding The Potential Leasing of 77 Parcels in Utah, at 6 (June 11, 2009) (attached) ("Thus, while some proponents argue that the RMP provided all of the input needed to make individual leasing decisions, that is clearly not the case. Decisions whether to offer specific parcels for oil and gas development must be made on a case-by-case basis, taking into account competing resource values and site-specific circumstances."); *id.* (The Utah RMPs "did not focus on how BLM officials should weigh competing considerations when deciding, for example, whether to offer or defer a request to nominate a parcel . . . in a wilderness quality area for potential oil and gas development."). BLM's prior analysis and weighing of the issue of resource protection versus extractive development must be revisited. In addition to directing BLM to fully analyze an alternative that would protect wilderness characteristics, *see supra*, IM 2010-117 directs BLM to "take into account" several "other considerations" during its evaluation of lease sale parcels, including (1) whether non-mineral resource values outweigh mineral development values in "undeveloped areas."

Thus, when evaluating lease parcels, BLM should determine whether "non-mineral resource values are greater than potential mineral development values" in "undeveloped

[6] Because BLM has not evaluated the Desolation Canyon and Jack Canyon wilderness character areas post-issuance of Secretarial Order 3310, it should treat the fact that these areas have identified wilderness values as "significant new information" and prepare a supplemental NEPA analysis to decide whether protection of these values is warranted or necessary under the Order. *See* 40 C.F.R. § 1502.9(c).

areas" – the seven parcels (UTU 88622, UTU 88624, UTU 88625, UTU 88626, UTU 88627, UTU 88628 and UTU 88629) at issue here. Because these areas also have considerable "non-mineral resource values," such as inventoried wilderness characteristics and important recreation, scenic and cultural values, BLM must evaluate and determine whether they are outweighed by potential mineral development values. The BLM has not performed this weighing. This determination "is a policy decision that is not dependent upon the economic values that may be assigned to competing resources." IM 2010-117, n.ix; *see also* 43 U.S.C. § 1702(c) (requiring BLM to give "consideration . . . to the relative values of the resources [of the public lands] and not necessarily to the combination of uses that will give the greatest economic return").

Leasing Will Further Contribute to Exceedances of Air Quality Standards

The Vernal EA states that oil and gas development in the Uinta Basin is likely the dominant source of ozone precursor emissions in the region. *See* EA at 18. These ozone levels, in winter, are well above NAAQS limits. *Id.* at 19. The Vernal EA even acknowledges that the development of these parcels will likely contribute to future potential ozone exceedances, yet tries to minimize these contributions by suggesting that they would be small. *See id.* at 26, 69-70. In other words, BLM acknowledges that the leasing of these parcels and their development will likely contribute to federal air quality exceedances, it simply insists that such contributions will not be major.

Every cumulative impacts air quality analysis relied on by the BLM in the Vernal and Price EAs has predicted that reasonably foreseeable development in the area will increase ozone pollution in the region. The West Tavaputs Plateau, the Greater Natural Buttes, the Uinta Basin Air Quality Study (UBAQS), and Gasco air quality analyses predict increases in the regional ozone levels. As explained in SUWA's prior comments, both the West Tavaputs Plateau analysis and the UBAQS analysis predicted ozone exceedances even before the Uinta Basin's significant winter ozone problem was first monitored. In other words, they ignore this issue and still find likely exceedances of ozone limits. The Gasco analysis predicts that ozone levels will increase 1.3 parts per billion (ppbs) as a result of the proposed development in the area, even with the applicant committed environmental protection measures. *See* Letter from James Martin, EPA, to Juan Palma, BLM 3 (Jan. 7, 2011) (attached). Thus, development considered in the Gasco analysis, completely separate from any development that might result from the issuance of these contested leases, will already increase the Uinta Basin's NAAQS-exceeding pollution levels for ozone. The Greater Natural Buttes analysis also predicts an increase in ozone levels in the region, outside of any development that might result from the issuance of these contested leases. *See* Greater Natural Buttes Supplemental Draft Environmental Impact Statement 4-10 to -12 (2011) (Greater Natural Buttes SDEIS) (excerpts attached). This further confirms that BLM's decision to issue the contested leases here will lead to exceedances of federal air quality standards.

However, the Federal Land Policy and Management Act (FLPMA) expressly prohibits the BLM from approving activity that will lead to exceedances of federal air quality standards. *See* 43 U.S.C. § 1712(c)(8) (requiring BLM to "provide for compliance with

applicable pollution control laws, including State and Federal air ... pollution standards"); 43 C.F.R. § 2920.7(b)(3) (requiring that BLM "land use authorizations shall contain terms and conditions which shall ... [r]equire compliance with *air ... quality standards* established pursuant to applicable Federal or State law") (emphasis added). This FLPMA prohibition has no *de minimus* exception. The ozone NAAQS, as explained in SUWA's comments on the draft Vernal EA, is exactly the sort of federal air quality standard that the BLM cannot violate. Because the issuance of lease parcels UT1111-17, UT1111-18, UT1111-19, UT1111-20, UT1111-22, and UT1111-11 and their subsequent development will contribute to further air quality exceedances for ozone, the BLM cannot offer these leases.

Lease Stipulations Are Insufficient to Protect Air Quality Resources

The Vernal EA acknowledges that there are various sources of ozone precursor emissions. Ozone pollution is formed through a photochemical process involving precursor pollutants, namely nitrogen oxides and volatile organic compounds. *See* Vernal EA at 17. Specifically, the Vernal EA lists tailpipe emissions from both diesel- and gasoline-fueled vehicles as contributing the ozone precursors of NO_X and VOCs. Vernal EA at 17. Natural gas dehydrators and compressor engines are also notable sources of NO_X emissions listed in the Vernal EA. *Id.* Well development equipment as well as drilling and fracturing equipment also contribute ozone precursors (principally, NO_X). *See id.* at 26. Long-term operations will contribute both VOCs and NOx from condensate storage tanks and well pad separators. *Id.*

As discussed above, the Vernal and Price EAs also acknowledge that oil and gas development on these leases will likely add to poor air quality, further exacerbating federal standards. However, the BLM also contradicts these conclusions by improperly concluding that stipulations will be sufficient to address air quality concerns. This is not the case. The stipulations proposed by the BLM may be effective at reducing emissions from unmitigated levels, but they do not guarantee compliance with federal air quality standards because they do not prevent contributions during times of high ozone levels.

The first stipulation imposed by the BLM applies only to certain internal combustion engines, less than or equal to 300 horsepower. *See* Vernal EA at 46. This stipulation limits these engines to 2 grams of NO_X per horsepower hour. *See id.* Importantly, this stipulation does not eliminate NO_X pollution from such engines. Indeed, a 300-horsepower designed engine with these controls could still emit over 5.7 tons of NO_X per year. These stipulations would do nothing to limit oxides of nitrogen from drill rigs, fracking equipment, well pad separators, storage tank venting, vehicles tailpipe emissions; they would do nothing to limit VOCs from any source. This stipulation, since it would still allow for ozone precursor emissions, could not guarantee compliance with federal air quality standards.

The second air quality-related stipulation imposed by the BLM does not guarantee compliance with federal air quality standards either. *See* Vernal EA at 49. As the BLM indicates, these stipulations are intended to *minimize* emissions of certain pollutants. *See*

id. They do not, however, promise to eliminate emissions during times of high ozone values. For example, none of these controls would address NO_X and VOC emissions from vehicles servicing wells, hauling equipment, transporting liquids, etc. *See* Tumbleweed II Exploratory Natural Gas Drilling Project, Final Environmental Assessment and Biological Assessment, App. D at 11-14 of 28 (June 2010) (excerpts attached). The BLM has no stipulation that would address these emissions. These BLM would also allow the use of Tier II engines, these also emit NO_X and VOCs. *See id.* at 15 of 28. Ultimately, BLM's stipulations would only reduce emissions, they would not eliminate them. The Greater Natural Buttes air quality analysis confirms this. In the project analyzed in that analysis, the project proponent had committed to a number of pollution-reducing measures that are the same as many of the stipulations proposed by the BLM here. *Compare* Vernal EA at 49, *and* Price EA at 64-65, *with* Greater Natural Buttes SDEIS at 4-13 to -14. However, the Greater Natural Buttes analysis still predicted an incremental increase in ozone levels—levels which already exceed NAAQS. *See* Greater Natural Buttes SDEIS at 4-12. Because air pollution is already above federal standards, it may be necessary for the BLM to completely eliminate emissions during certain parts of the year—winter—or during hot summer days. The BLM's stipulations do not include such provisions and for this reason they are insufficient to satisfy BLM's FLPMA obligation not to violate federal air quality standards.

There Are No Deficiencies in the Uinta Basin Monitors and They Are Operating According to CFR Standards

The Vernal EA discusses the fact that two monitors located in the Uinta Basin began operating in 2009, recording winter ozone values for the first time. *See* Vernal EA at 18. The Vernal EA indicates that these monitored values are representative of the area and are viable. *Id.* However, it inexplicably suggests that these two monitors are not being "operated to [Code of Federal Regulations (CFR)] standards, and as such are not considered adequate data to make a NAAQS determination." *Id.* This assertion is incorrect and unjustified; these monitors are being operated according to CFR standards and there is no reason the data cannot be used for a NAAQS determination.

Consent Decrees Require These Monitors to Comply with 40 CFR Part 58

The Ouray and Red Wash monitors were installed as a result of a consent decree in *United States v. Kerr-McGee Corp.*, Case 1:07-cv-01034-EWN -KMT (D. Colo.) (attached). Paragraphs 80-82 spell out the ambient air monitoring concessions that resulted in these monitors being installed and operated. In those paragraphs, Kerr-McGee—the company subject to the consent decree—agreed that the stations would "meet the siting, methodology and operational requirements of 40 CFR Part 58." Consent Decree ¶ 81. Kerr-McGee further agreed that all monitoring data would be "collected in a manner reasonably calculated to meet EPA's quality assurance/quality control ("QA/QC") requirements of 40 CFR Part 58, App. A" and acknowledged that additional guidance could be found in the "'Quality Assurance handbook for Air Pollution Measurement Systems.'" Consent Decree ¶ 81. Kerr-McGee was required to operate

these stations up to the point it had expended $300,000 in capital, installation, operation, and maintenance costs on the monitors. Consent Decree ¶ 82.

Subsequently, two new consent decrees have provided for the continued operation and maintenance of the Red Wash and Ouray monitors. In *United States v. Miller, Dyer & Co., LLC*, Case 2:09-cv-00332-DAK (D. Utah), Miller, Dyer & Co. (or a substitute) was required the operate the two monitors for a period of one year, beginning when Kerr-McGee had completed its obligation. Consent Decree, *United States v. Miller, Dyer & Co.*, ¶ 42 (attached). As with the prior consent decree, Miller, Dyer & Co. was required to operate the monitors in accordance with 40 CFR Part 58, including the quality assurance/quality control requirements of Appendix A in 40 CFR Part 58 and the Quality Assurance Handbook for Air Pollution Measurement Systems. *Id.* ¶ 42(b). Furthermore, Miller, Dyer & Co. was required to certify that it was complying with these requirements in an annual report. *Id.* ¶¶ 42(c), 52.

Upon termination of this obligation, the consent decree in *United States v. Colorado Interstate Gas Company*, Case 2:09-cv-00649-TS (D. Utah), compelled Colorado Interstate Gas Company to fund the operation of the Red Wash and Ouray monitors for a period of two years. Consent Decree, *United States v. Colorado Interstate*, ¶ 11 (attached). As with the other two consent decrees, Colorado Interstate Gas Company had to comply with the methodology and operational requirements of 40 CFR Part 58. *Id.* ¶ 12. Colorado Interstate Gas Company also had to certify compliance with these requirements in an annual report. *Id.* ¶¶ 13, 16. It is our understanding that Colorado Interstate Gas Company is currently operating the Red Wash and Ouray monitors.

40 CFR Part 58 Contains EPA's Guidance for Monitoring Used for Area Designation Purposes

40 CFR Part 58 "contains requirements for measuring ambient air quality and for reporting ambient air quality data and related information." 40 CFR Section 58.2(a). This part of the federal regulations spells out how monitoring should be conducted so that it can be used for National Ambient Air Quality Standards compliance and for furthering the protection of human health and the environment. The Ouray and Red Wash monitors are required to comply with all of these requirements. They are located in Indian Country in an area without a tribal implementation plan, therefore EPA has primacy for implementing the National Ambient Air Quality Standards program in this area. Since the EPA has primacy here and this data is being collected for the EPA in full compliance with the federal regulations related to ambient monitoring, this data should be usable for area designation purposes by the EPA and for NAAQS designation purposes.

This data is fully valid and complies with CFR requirements. Adding to its robustness are the following factors. All of these consent decrees included provisions granting the United States the right of entry at all reasonable times for monitoring compliance with the consent decree, including equipment, facilities, and information records. Consent Decree, *United States v. Kerr-McGee*, ¶ 140; Consent Decree, *United States v. Miller, Dyer & Co.*, ¶ 79; Consent Decree, *United States v. Colorado Interstate*, ¶ 43. The EPA

has the ability to enter these monitors or to demand any data that it requires to verify accuracy. Furthermore, each consent decree spells out that the operators will comply with all of 40 CFR Part 58; this includes Appendix A and its quality assurance requirements for the data. The operators here have also developed contracts for third-party data audits to ensure the accuracy of this data. *See, e.g.*, Golder Associates, Uinta Basin Air Monitoring Program Monitoring and Quality Assurance Plan (June 2009) (monitoring plan for the Kerr-McGee obligation). The Vernal EA was incorrect to suggest that this data is deficient in any respect or that it does not comply with CFR requirements.

The BLM Has Not Analyzed the Impacts of Its Decision on Regional Dust Production and Climate Change

The Price and Vernal EAs have neglected their duties under NEPA to analyze how development on these leases may affect early snow melt on nearby mountains because of wind deposition. The BLM acknowledges that this is an issue and that it has not prepared any analysis in these EAs regarding those impacts. *See* Vernal EA at 6; Price EA at 5. Instead, the BLM hints that it may consider these impacts at the site-specific stage, or will simply never review them. *See, e.g.*, Vernal EA at 73. The BLM must perform some analysis now, before it has irrevocably committed resources to oil and gas development.

The Vernal EA and Price EA do not even attempt to explain whether the leasing of these contested parcels will likely increase the risk of windborne erosion or decrease this risk. Since the development of these leases could lead to surface disturbance, they will likely tend to exacerbate dust on snow problems. *See* Thomas Painter *et al.*, Response of Colorado River Runoff to Dust Radiative Forcing in Snow, Proceedings of the National Academy of Sciences (2010) (attached). The BLM has not acknowledged this.

There is nothing in the BLM's memorandum of understanding (MOU) with the EPA or in the Greater Natural Buttes analysis that prevent the analysis of the dust on snow problem here. In fact, the BLM's MOU with the EPA explicitly recognizes that the agency must still comply with NEPA in preparing its analyses and that the MOU is intended to address NAAQS issues and air quality related values; it says nothing about airborne dust problems as they relate to speeding snowmelt. *See* Memorandum of Understanding among the U.S. Dep't of Agriculture, U.S. Dep't of the Interior, and the U.S. Environmental Protection Agency, Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions through the National Environmental Policy Act Process 4 (2011) (attached). In fact, the dust on snow problem is really an issue of regional climate change the MOU does not apply to climate change issues and reminds the BLM that it must perform those analyses during its NEPA reviews. *See id.* Thus, if anything, by ignoring the dust on snow problem here the BLM is not only violating NEPA, it is also violating its MOU with the EPA. Likewise, the Greater Natural Buttes analysis contains no prohibition on the BLM performing such an analysis here. Even if it did, it is unclear how that document could prevent the BLM from complying with its NEPA obligations.

The BLM has failed to consider the impacts of soil disturbance from these lease developments and how that might affect regional snowpack.

Greater Sage-Grouse

Oil and gas development authorized by the leasing of the protested parcels is likely to have significant direct, indirect, and cumulative impacts on greater sage-grouse brood rearing habitat, and result in population declines. Parcel UTU 88624 contains greater sage-grouse brood rearing habitat. (Rocky Mountain Wild internal GIS screen) This parcel does not contain a stipulation aimed at protecting this important sage-grouse habitat. This parcel should be deferred until appropriate protections are put in place to protect the greater sage-grouse.

Rare and Imperiled Plants (including Uintah Basin hookless cactus, Clay Reed-Mustard, and Graham's beardtongue)

We are very concerned that the mitigation measures proposed to protect rare plants on parcel UTU 88622 will not be sufficient to mitigate impacts to insignificance. We recommend that BLM apply a lease stipulation that requires a 200 meter (600 ft.) no surface occupancy buffer between surface disturbance (roads, well pads, pipeline right-of-ways etc. in occupied habitat for all the rare plants in question here. Please see the following document for support for this recommendation: Elliott, B.A., S. Spackman Panjabi, B. Kurzel, B. Neely, R. Rondeau, and M. Ewing. Recommended best management practices for plants of concern: Practices developed to reduce the impacts of oil and gas activities. Colorado Rare Plant Conservation Initiative, April 2, 2009 (attached).

In addition, the notices and stipulations set for parcel UTU 88622 to protect these plant species are entirely voluntary and must be made mandatory. As BLM is well aware, these lease notices do not change the term of the lease and thus cannot be enforced. *See* 43 C.F.R. § 3101.1-3 ("Information notices shall not be a basis for denial of lease operations.").

Also, surveys for Uintah Basin hookless cactus should be done when the cactus is blooming as they are difficult to detect at other times of the year.

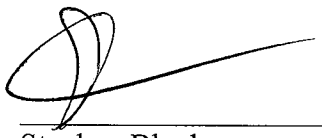
Finally, BLM should make sure that the stipulations can still be enforced for species whose regulatory status has changed. The population of plants formerly referred to as Uinta Basin hookless cactus was recently confirmed to be three different species: *Sclerocactus wetlandicus* (Uinta Basin hookless cactus), *Sclerocactus brevispinus* (Pariette cactus), and *Sclerocactus glaucus* (Colorado cactus). All three species, which were formerly protected as a single taxa under the Endangered Species Act, are now recognized as Threatened species under the Endangered Species Act. This change underscores the importance of protecting all three species from harm, such as the direct, indirect, and cumulative impacts of oil and gas development. Now that these three species are no longer erroneously lumped together, their individual populations are

recognized as much smaller than originally thought. Thus, previous evaluations of the relative security of the species that informed the current standard stipulations for these plants may no longer be accurate. The standard measures relied upon to protect *Sclerocactus* habitat and individuals from oil and gas impacts should be reevaluated before BLM offers parcels UTU 88622 for sale.

REQUEST FOR RELIEF

SUWA respectfully requests the following appropriate relief: (1) the withdrawal of the seven protested parcels from the November 15, 2011, Competitive Oil and Gas Lease Sale until such time as the agency has complied with NEPA and FLPMA or, in the alternative, (2) withdrawal of the seven protested parcels until such time as the BLM attaches unconditional no surface occupancy stipulations to all protested parcels.

This protest is brought by and through the undersigned on behalf of the Southern Utah Wilderness Alliance, The Wilderness Society, Natural Resources Defense Council, Grand Canyon Trust, and Rocky Mountain Wild. The members and staff of these conservation organizations reside, work, recreate, or regularly visit the areas to be impacted by the proposed lease sale and therefore have an interest in, and will be affected and impacted by, the proposed action.



Stephen Bloch
David Garbett
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Utah 84111

Attorneys for Protestors
Southern Utah Wilderness Alliance *et al.*